

**MINUTES**  
**WARRICK COUNTY AREA BOARD OF ZONING APPEALS**

Regular meeting held in the Commissioners Meeting Room,  
Third Floor, Historic Courthouse,  
Boonville, Indiana  
September 26, 2011 at 6:00 P.M.

**MEMBERS PRESENT:** Larry Willis, Chairman; Mike Winge, Vice Chairman; Don Mottley, Terry Dayvolt, Tina Baxter and Judy Writsel.

Also present were Morrie Doll, Attorney, Sherri Rector, Executive Director and Christy Powell, Staff.

**MEMBERS ABSENT:** Scott Dowers.

Roll call was taken and a quorum declared present.

**PLEDGE OF ALLEGIANCE** A moment of silence was held followed by the Pledge of Allegiance.

**MINUTES:** Upon a motion made by Don Mottley and seconded by Mike Winge, the Minutes of the last regular meeting held August 22, 2011 were approved as circulated.

The Chairman explained the Rules of Procedure to the audience.

**SPECIAL USES:**

**BZA-SU-11-19**

**APPLICANT:** Lamar Outdoor Advertising by S. Carter Clarke, VPGM

**OWNER:** Marcus O. and Janice E. Miller

**PREMISES:** Property located on the S side of SR 66 approximately 0 feet E of the intersection formed by SR 66 and Triple Crown Dr. Lt. 79 in Triple Crown Estates Subdivision. Ohio Twp. 8711 SR 66.

**NATURE OF CASE:** Applicant requests a Special Use (SU-8) from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, Indiana to allow an electronic message board on the west face only of an existing standard billboard in a "C-1" Neighborhood Commercial Zoning District. *Advertised in the Boonville Standard September 15, 2011.*

Carter Clark was present.

Larry Willis asked if Mr. and Mrs. Miller were present.

Mrs. Rector stated they have a Power of Attorney granting Lamar the ability to sign the petition and appear at this meeting.

The Chairman requested a staff report.

The Executive Director stated they do have all the return receipts from certified mail to the adjacent property owners. She this is a Special Use request for a for an electronic message board on the west face only on an existing standard billboard. She stated the sign height will actually be reduced in size with the elimination of the top sign, going from 56' to 49'. She added the subject property and properties to the east and west are zoned "C-1" Neighborhood Commercial Zoning District and are businesses. She stated the property to the South is zoned "R-3" Resort Zoning District and is single family homes and all being Triple Crown Estates Subdivision. She further added the property to the north (across SR 66) is zoned "C-4" General Commercial and is Bellmoore Landing Subdivision (Wal-Mart). Mrs. Rector stated there is no flood plain on the property and the existing entrance is off Ruffian Lane. She stated Richard Meyer with INDOT inspected the site and stated via email that he sees nothing that sticks out at this time that really concerns him and it is a legal conforming billboard... any final decision on our end will come when they file an INDOT application. She stated the applicant has answered the proposed use questions in the Board's packets and as previously stated, the Millers' have given Lamar Outdoor Advertising a power of attorney granting them the ability to sign the application and represent them at this meeting. She stated the application is in order.

Carter Clark stated he believes they all have copies of what the proposed before and after sign would look like. He stated it is pretty simplistic and self-explanatory and he would be happy to answer any questions. He stated they are going to be taking the top half of the board off and just replacing one so instead of four faces there will be two faces; a west face for the electronic message and the east face will be a "static" sign. He stated they have deployed five signs in Vanderburgh County over the last couple of years and they have seen no adverse issues with them. He stated the State made these acceptable by law about four years ago and they do have a process to go through. He stated they have had tremendous success with these electronic message signs in as much as it helps the advertisers as well as the community. He stated they have a national agreement with the FBI for America's most wanted and they also have a national agreement for Amber Alerts and a Silver Alert with the State. He stated they did a test run with FEMA a couple months ago in case of a natural disaster to tell people where to go. He stated that test run dealt with an earthquake on the New Madrid Fault. Mr. Clark stated they also work with the local Sheriff and police departments and if they have wanted felons they can put them up on the Board and try to do their part to assist. He stated he can tell them for sure that everyone they have put up in Vanderburgh County has been caught. He said he won't say it is because of the billboards but he will say they helped.

Mr. Clark stated the advertisers like the flexibility; they can change their message every minute if they want. He stated they can run six advertisers every ten seconds by State Law and so a local restaurant might want to advertise a breakfast, lunch and dinner special. He stated they see a lot of people doing that because there are no production charges because it comes straight from the computers and the artwork takes no time at all. He stated it is really beneficial for all parties and he will be happy to take any questions.

Larry Willis reiterated this is the existing billboard and they are reducing the height from 56' to 49'.

Mr. Clark stated they are taking the top half off and going to add about a five foot transition to make it just a little higher but it will still be a single sign, so they are reducing the total square footage by half.

Judy Writsel asked if this is one of those signs that have about four different messages that take turns and are electronically lit.

Mr. Clark stated they are LED lit and it can have up to six advertisers. He stated they have an emergency slot for seven but if it is a true emergency they turn all of the advertisements off and run only the emergency. He stated they do not flash; they can't flash or do intermittent lights.

Mrs. Writsel stated so this is visible from the traffic light at Frame Road and that is the traffic they are targeting.

Mr. Clark stated that and the traffic on SR 66.

Don Mottley asked if the east side of the sign will just be a regular billboard.

Mr. Clark stated yes, it will still be vinyl they will put up and change out however many times an advertiser wants to do that. He stated it is usually once a year.

Ascertaining there were no other comments from the Board and being no remonstrators Mr. Willis called for a motion.

Don Mottley made a motion the finding of fact be made as follows from the testimony and proposed use statement:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
4. The USE as developed will not adversely affect the surrounding area.
5. Adequate and appropriate facilities will be provided for proper operation of the USE.
6. The specific site is appropriate for the USE.

And the Application be approved in accordance to the application and plans on file, subject to the following conditions:

1. Subject to any required Building Permits being obtained.
2. Subject to any required permits from INDOT or any other State or Federal permits.
3. Subject to the Special Use not being altered to become any other use nor expanded than that which was approved by the Board of Zoning Appeals.
4. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
5. Subject to all public utility easements and facilities in place.
6. Subject to no use of the words, “stop”, “danger”, “look”, or any other word which would confuse traffic.
7. Subject to no rotating or revolving beams of light.

Attorney Doll stated on page 136 of the Comprehensive Zoning Ordinance, Table B doesn't list display off premise billboards in a “C-1”. He stated he realizes the sign has been there but this ordinance doesn't allow for one now. He stated the sign is pre-existing, non-conforming but if it is changed then it is a different situation. He stated the Supreme Court has held that if you have a pre-existing, non-conforming use you can never outlaw it but if you alter it or modify it in any way, shape or form...He stated there was a case involving a Cracker Barrel where they had a non-conforming sign and they removed the sign to repair it instead of fixing in the air. He stated by removing it they lost their legal privilege to have a non-conforming use and the Supreme Court denied their right to re-erect the same, identical sign after it was fixed. He stated he is trying to verify if this ordinance allows billboards in a “C-1” zoning. He stated he doesn't know if they can permit a changed billboard to be constructed there.

Mrs. Rector stated she would guess it was left out of the “C-1” zoning because it is “Neighborhood” Commercial”. Mrs. Rector stated the permit was issued for the sign in 1999, which was before the sign ordinance was passed and a billboard could go in any commercial zoning.

Considerable discussion was held regarding the use of the sign and ability to replace the sign if less than 60% destroyed. It was also discussed that the only way the sign can currently be altered would be for the property to be rezoned. It was discussed that the rezoning could be presented with a Use and Development Commitment.

Don Mottley rescinded his motion to approve and then made a motion to continue this item to the October 24, 2011 meeting in order to give them time to discuss with the landowners to see if they are willing to rezone the property. The motion was seconded by Mike Winge and unanimously carried.

**BZA-SU-11-20**

**APPLICANT:** Pampered Pet Nanny by Tara Raschel Arnold, Owner

**OWNER:** Tara R. Arnold

**PREMISES:** Property located on the E side of Libbert Rd. approximately 0 feet NE of the intersection formed by Libbert Rd.(W 900) and Vann Rd. (S 350) Ohio Twp. 3488 *Libbert Rd.*

**NATURE OF CASE:** Applicant requests a Special Use (SU-24) from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, Indiana to allow a dog kennel boarding facility for up to 12 dogs in an "A: Agricultural Zoning District. (*Complete legal on file.*) Advertised in the Boonville Standard September 15, 2011.

Tara Arnold was present.

Larry Willis stated for the record that his company has given Ms. Arnold an estimate for a fence but they have not been awarded a contract. He then called for a staff report.

Mrs. Rector stated they have all of the return receipts from certified mail of notice of this meeting to the adjacent property owners. She stated this is a Special Use (SU 24) for a dog kennel boarding facility for up to 12 dogs. She stated the owner is showing the proposed kennel will be run out of the existing 36' x 21' unattached accessory building and 126' x 14' fenced in dog run area as shown on the plot plan. She stated she has also included a planned layout of the inside of the accessory building in the Board's packets. Mrs. Rector stated the subject property and all surrounding properties are zoned "A" Agriculture with residences except for the property to the south which is zoned R-1A and is Joseph Hayden Subdivision with residences. She stated there is no flood plain on the property and it has access on both Libbert and Vann Roads. She added that Robert Howard, County Engineer signed off that the driveway is sufficient for the 12 dog kennel being requested. She stated this request was in response to a complaint filed with the Building Commission by her ex-husband Charles Deters. She said that Charles Deters called the Planning Commission and was told he would have to file a formal complaint through our office but never did. She added that Tara came in after being informed there would possibly be a complaint filed on the kennel and she is attempting to bring the property into compliance. She said the property is on Chandler Sewer and Mrs. Arnold has answered the proposed use questions in the Board's packets and the application is in order.

Mrs. Arnold had nothing to add.

Larry Willis asked how long she has run this operation.

Mrs. Arnold stated four years.

Mr. Willis asked if she only has twelve dogs.

Mrs. Arnold stated when she started out in 2008 she only had 2-4 dogs and she kept them outside of her home and she was going to clients' homes and doing pet sitting. She stated so this really just started two years ago.

Mike Winge asked if she does this full time.

Mrs. Arnold stated this is her income.

Don Mottley asked what the closest residence is to her.

Mrs. Arnold stated it would probably be the Porters, no it would be the Jenkins because they are directly behind her fence line.

Don Mottley asked if they have ever complained to her.

Mrs. Arnold stated she has never received any complaints from neighbors.

Tina Baxter asked if the dogs have an outside run.

Mrs. Arnold said they do.

Tina Baxter said so the dogs she has now have been outside and the neighbors have not complained about noise.

Mrs. Arnold stated she has never heard any complaints and she has even asked a couple of her neighbors if they have any issues and they said no.

Larry Willis stated the proposed kennel is listed as a garage asked if the dotted line is the fence line.

Mrs. Arnold stated it is the fence line. She stated there is another fence around the pool too.

Mike Winge asked if there is running water in the kennel to which Mrs. Arnold stated there is.

Attorney Doll asked what interest Charles Deters had in this property to which Mrs. Arnold stated he is her ex-husband.

Attorney Doll commented he filed this complaint while he was still the deeded owner and if there was a violation he would be equally responsible. He commented this is a spiteful complaint.

Mrs. Arnold stated it absolutely is and she had to also have restraining orders placed against him.

Attorney Doll stated he doesn't like the Plan Commission or Board of Zoning Appeals being suckered into personal disputes among citizens of the County.

Ascertaining there were no other questions from the Board the Chairman called for remonstrators.

Lisa Smith, 8955 Vann Road, stated she lives directly across the street. She stated she isn't here to put her out of business but they do have concerns. She stated right now they haven't had any complaints and yes they do hear dogs but her concern is if you get 12 dogs in there that will

increase the noise level. She stated they are about 75 feet from the existing dog run and 100 feet from the kennel and their feelings are 12 dogs will increase the noise. She stated right now they don't have an issue with it but she doesn't think there have been 12 dogs there. She said she heard two or three this morning.

Larry Willis stated so her major concern is about the barking.

Mrs. Smith stated basically yes. She stated this is a residential area and there are four other homes in the Joe Hayden Subdivision along with a neighbor on the corner and the house behind her and a house beside her. She stated those properties do sit further back from the road than hers does though and so she is the closest to the kennel and dog run.

Mike Winge asked if she owns a dog.

Mrs. Smith stated she does.

Mr. Winge asked if the other neighbors own dogs and if so, how many and do they bark.

Mrs. Smith stated one or two dogs isn't a problem but twelve dogs could be an issue.

Discussion ensued over how many dogs are in the neighborhood with it being determined there are about ten dogs in the neighborhood.

Mrs. Smith stated they are not all confined and so close to her home.

Discussion further ensued over what types of dogs are in the neighborhood and how often they bark and that dogs get others to bark. It was discussed where the dogs are kept on the Smith property and the other neighbors property.

Mike Winge asked when Mrs. Arnold lets the dogs out.

Mrs. Arnold stated they go out the first thing in the morning between 7:00 am to 8:00 am; then 9:00 am to 10:00 am. She stated they are only out for about twenty minutes. She stated then they go out a couple of times in the afternoon and then about 4:30 pm and then the last time at 8:00 pm.

Morrie Doll asked if they are all let out at once.

Mrs. Arnold stated they are let out in groups but sometimes she lets them all out, it depends on how many she has but it could be up to 12 dogs at once.

Morrie Doll asked if she would be willing to make a concession to not let them all out at once.

Mike Winge asked if the kennel is finished out.

Mrs. Arnold stated it is heated and air conditioned. She stated between her home and the building is about thirty feet and she cannot hear them when they are in the building.

Mike Winge stated so the only time they will hear the dogs is when they are outside.

Mrs. Arnold stated she also screens the dogs and she doesn't let just any dog come stay with her and the environment is drywall and tile and she doesn't want disruptive or noisy dogs. She stated that will stress the other dogs out.

Discussion ensued over how many dogs could be let out at a time and that they will be out during times people are up and when people are sleeping the dogs will be kenneled. Discussion ensued if the dogs are being rotated in and out they could be out all day.

Ascertaining there were no other questions the Chairman called for a motion.

Mike Winge made a motion the findings of fact be made as follows from the testimony proposed and use statement:

- 1 The USE is deemed essential or desirable to the public convenience or welfare.
- 2 The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
- 3 The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
- 4 The USE as developed will not adversely affect the surrounding area.
- 5 Adequate and appropriate facilities will be provided for proper operation of the USE.
- 6 The specific site is appropriate for the USE.

And the Application be approved in accordance to the application and plans on file, subject to the following conditions:

- 1 Subject to any required Building permits being obtained.
- 2 Subject to the Special Use not being altered to become any other use nor expanded than that which was approved by the Board of Zoning Appeals.
- 3 Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
- 4 Subject to all public utility easements and facilities in place.



The motion was seconded by Terry Dayvolt. Larry Willis abstained from voting and all other members voted for the motion.

**VARIANCE:**

**BZA-V-11-21**

**APPLICANTS and OWNERS:** Mark and Linda Mabrey

**PREMISES:** Property located on the W side of Old Plank Rd. approximately .6 miles N of the intersection formed by Old Plank Rd. (W 700) & Jenner Rd. (S 150), Ohio Twp. *1039 Old Plank Rd.*

**NATURE OF CASE:** Applicant requests a Variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, Indiana to allow an Improvement Location Permit to be issued for the construction of a 24' by 32' pole barn not meeting the minimum front yard requirement of 25'. Applicant is proposing a front yard of 10', thus requesting a relaxation of 15' from the regular requirements in an "A" Agriculture Zoning District. *(Complete legal on file.) Advertised in the Boonville Standard September 15, 2011.*

Mark and Linda Mabrey were present.

Larry Willis called for a staff report.

Mrs. Rector stated they have submitted all of the return receipts from certified mail of notice of this meeting to the adjacent property owners. She added this is a Variance to allow Improvement Location Permit to be issued for a 24' x 32' unattached accessory building encroaching 15' into the 25' building setback line and front yard requirement. She said the applicant states on application, *The topography of the land as evidenced in the enclosed photographs prohibits the construction in any other area of the property without adversely affecting drainage and/or water runoff into the structure.* She added the subject property is zoned "A" Agriculture and all surrounding property is zoned "A" Agriculture and "R-1A" with residences on them. She added there is no flood zone on the property and it has an existing entrance off Old Plank Road. She stated they have a letter from Robert Howard, County Engineer stating he made an inspection of the site and if the proposed edge of the pole barn is located 10 feet off the right of way line, as shown on the drawing and pictures provided to us, it would appear that sight distance is adequate. She commented Old Plank Road has a 25' right of way and the property owner has submitted pictures of the layout of the land included in the Board's packets. She stated Mr. Mabrey has done an excellent job with the photos showing the reason why he can't build the garage and meet the yard requirements. She added the application is in order.

Mr. Mabrey stated regardless of the outcome this evening he would like to sincerely thank staff for everything she did to help him put this together. He stated he thinks he has provided them with everything to justify his request. He stated they bought the property about five years ago and they have made a lot of improvements in regards to bringing in dirt to try to change the drainage and construct a fence and other things. He stated they have accumulated a lot of equipment and now they need a place to put it. He stated there is an area that shows on the drawing and in some of the photos that appears to be flat but it is the field bed for the septic and

they can't build there and out of all the area on their property, this is the flattest, even though it isn't flat. He stated it will still take some work to build there.

Larry Willis thanked him for his comments on the staff because they are overworked and short-handed and they do a good job.

Judy Writsel asked if they need a new driveway cut to which Mr. Mabrey stated no they will access of the existing driveway.

Terry Dayvolt asked if was right across from Bob and June Scales.

Mr. Mabrey stated he is next door to them and that is the corner where the garage will go.

Don Mottley asked if anyone has questioned him.

Mr. Mabrey stated Bob Scales, Jr. lives across the road and came over Saturday and commented on the landscaping and asked him to show him where he was going to put the garage and they walked it off and he didn't give him any indication that he was upset over the location.

Ascertaining there were no other questions from the Board and being no remonstrators present, the Chairman called for a motion.

Don Mottley made a motion to approve the Variance Application based upon and including the following findings of fact:

1. The grant of the Variance will not be injurious to the public health, safety, morals, and general welfare of the Community. As such, it is further found that the granting of the Variance shall not be materially detrimental to the public welfare.
2. The use or value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. As such, it is further found that the granting of the Variance shall not result in substantial detriment to adjacent property or the surrounding neighborhood.
3. The need for the Variance arises from some condition peculiar to the property involved. The peculiar condition constituting a hardship is unique to the property involved or so limited to such a small number of properties that it constitutes a marked exception to the property in the neighborhood. Such condition is the topography and shape of the lot. It is a very narrow lot with a very steep fall.
4. The strict application of the terms of the Warrick County Comprehensive Zoning Ordinance will constitute a practical difficulty, unusual and unnecessary hardship if applied to the property for which the Variance is sought.
5. The approval does not interfere substantially with the Warrick County Comprehensive Zoning Ordinance adopted pursuant to IC 36-7-4-500 et seq.

6. The granting of the Variance is necessary in order to preserve a substantial property right of the petitioner to use the property in a reasonable manner, and not merely to allow the petitioner some opportunity to use his property in a more profitable way or to sell it at a greater profit.
7. That the hardship to the applicant's use of the property was not self-created by any person having an interest in the property nor is the result of mere disregard for or ignorance of the provisions of the Warrick County Comprehensive Zoning Ordinance.
8. The approval of the requested Variance is the least modification of applicable regulations possible so that the substantial intent and purpose of those regulations contained in the Warrick County Comprehensive Zoning Ordinance shall be preserved.
9. This Variance shall expire six (6) months after this date, UNLESS a Permit based upon and incorporating this Variance is obtained within the aforesaid six (6) month period or unless the provision of the Variance are adhered to within the aforesaid six (6) month period. Upon advance written application for good cause, a renewal for an additional six (6) month period may be granted by the Secretary of the Area Plan Commission.
10. The Variance Application is subject to the terms contained therein and the plans on file subject to the following additional conditions:
  - a) Subject to an Improvement Location Permit being obtained.
  - b) Subject to a Building Permit being obtained.
  - c) Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
  - d) Subject to all utility easement and facilities in place.

The motion was seconded by Tina Baxter and unanimously carried.

**OTHER BUSINESS:**

None.

**ATTORNEY BUSINESS:**

None.

**EXECUTIVE DIRECTOR BUSINESS:**

None.

Being no other business the meeting adjourned at 7:15 P.M.

---

Larry Willis, Chairman

ATTEST:

The undersigned Secretary of the Warrick County Board of Zoning Appeals does hereby certify the above and foregoing is a full and complete record of the Minutes of said Board at their monthly meeting held September 26, 2011.

---

Sherri Rector, Executive Director